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HALE AND DORR LLP 300 PARK AVENUE NEW YORK, NY 10022			VAN DOREN, BETH	
		ART UNIT	PAPER NUMBER	
		3623		

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application N .</b>	<b>Applicant(s)</b>
	09/888,004	PITTELLI, PATRICK
	<b>Examiner</b>	<b>Art Unit</b>
	Beth Van Doren	3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 14 January 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-17 and 20-27 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-17 and 20-27 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.  
13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.  
14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ . 6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/14/04 has been entered.
2. The following is a non-final office action in response to the supplemental amendment filed 01/14/04. In response to this amendment, Examiner withdraws the rejections set forth in the Office Action dated 06/23/03 and establishes the rejections found below. Claims 1, 9, 10, 17, 22, 24, 26, 27 have been amended. Claims 18 and 19 have been canceled. Claims 1-17 and 20-27 are now pending in this application.

### ***Claim Objections***

3. Claim 27 is objected to because it contains a typographical error. Claim 27 contains the phrase "from said plurality of artist", which should more appropriately be --from said plurality of artists--. Correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 7, 9, 10, 13-17, 20-25, and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Chacker (U.S. 6,578,008).

5. As per claim 1, Chacker teaches a computer-implemented method for determining the market demand for an artist comprising:

receiving user input to determine which artist to select from a pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein user input determines which artist to select from a pool of artists);

determining the market demand for said selected artist based on users contributing to a fund for said artist (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, which discuss determining the market demand for an artist based on consumers support and contribution to a virtual fund of an artist);

identifying artists that attain a predefined level of user contributions (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, which discusses identifying artists that attain the highest level of support from the consumers (by way of stocks purchased) and offering these artists recording contracts);

providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell there contribution to an artist); and

(b) a redistribution of their contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their contribution undistributed in a non-artist account (See at least column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-45, wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist).

6. As per 2, Chacker teaches a method wherein said user input is in the form of user votes (See at least column 7, lines 1-25, wherein the users vote).

7. As per claim 7, Chacker discloses a method further comprising maintaining information on said users, and using said information to market said artist (See at least figure 5, column 9, lines 35-40, and column 13, lines 29-45, wherein a user logs in and retrieves his/her information and wherein the user's email address is used to market an artist).

8. As per claim 9, Chacker discloses an apparatus for determining the market demand for an artist comprising:

means for receiving user input to determine which artist to select from a pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67,

Art Unit: 3623

column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein user input determines which artist to select from a pool of artists);

means for determining the market demand for said selected artist based on users contributing to a fund for said artist (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, which discuss determining the market demand for an artist based on consumers support and contribution to a virtual fund of an artist);

means for identifying artists that attain a predefined level of user contributions (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, which discusses identifying artists that attain the highest level of support from the consumers (by way of stocks purchased) and offering these artists recording contracts);

means for providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell there contribution to an artist); and

(b) a redistribution of their contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their contribution undistributed in a non-artist account (See at least column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-45, wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist).

9. As per claim 10, Chacker teaches a method for an artist to obtain financial support comprising:

receiving and storing on a file server a sample of the artist work (See at least figure 6, column 5, lines 15-35 and 65-67, and column 6, lines 1-10 and 60-67, wherein the sample is received and stored);

evaluating the artist's work from a pool of artists (See at least column 5, lines 15-35 and 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist's work is evaluated);

selecting an artist based on said artist's work to be eligible for financial contributions from users (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected by users as eligible for financial contributions for said user);

establishing a fund of any such contributions for an artist who meets a predefined criteria (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein a fund is established); and

providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell their contribution to an artist); and

(b) a redistribution of their contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their contribution undistributed in a non-artist account (See at least column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-45, wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist).

10. As per claim 13, Chacker discloses a method further comprising returning the selected artist to the pool of artists if artist fails to meet predefined criteria (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the selected artist is returned to the pool if the artist does not reach the predefined level of support as dictated by the A&R of the system).

11. As per claim 14, Chacker discloses a method wherein selecting an artist to be eligible for financial support is based on the artist who attains the largest number of user votes (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected for a recording contract based on attaining the largest number of votes).

12. As per claim 15, Chacker teaches a method wherein selecting an artist to be eligible for financial support is determined by a panel of individuals (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected for financial support based upon the panel of individuals initially reviewing the artist).

13. As per claim 16, Chacker teaches a method wherein selecting an artist to be eligible for financial support is determined in part by a panel of individuals and in part by user votes (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected for a recording contract and financial support based upon the panel of individuals initially reviewing the artist along with the panel of users of the tool).

14. As per claim 17, Chacker discloses a computer implemented system for determining the market demand for an artist comprising:

a file server (See at least figure 6, column 5, lines 15-35 and 65-67, and column 6, lines 1-10 and 60-67, which discloses the system); and

a processor programmed for implementing instructions for:  
receiving and storing user input on said file server to determine which artist to select from a pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 6, lines 1-10 and 60-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 15-35 and 55-67, and column 9, lines 1-20, wherein user input determines which artist to select from a pool of artists);

determining the market demand for said selected artist based on users contributing to a fund for said artist (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, which discuss determining the market demand for an artist based on consumers support and contribution to a virtual fund of an artist);

identifying artists that attain a predefined level of user contributions (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, which discusses identifying artists that attain the highest level of support from the consumers (by way of stocks purchased) and offering these artists recording contracts); and

providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell there contribution to an artist); and

(b) a redistribution of their contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their contribution undistributed in a non-artist account (See at least column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-45,

wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist).

15. As per claim 20, Chacker discloses a system comprising instructions for selecting artists from a pool of artists using inputs from a panel of individuals (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected based upon the panel of individuals initially reviewing the artist).

16. As per claim 21, Chacker teaches a method wherein the number of artists that can be selected to receive financial support from the pool of artists is predefined (See column 8, lines 60-67, wherein the number of artists is at least 50).

17. As per claim 22, Chacker discloses a system for presenting artists to determine market demand for artists comprising a computer programmed having instructions for implementing the method of:

receiving and storing work of artists on a file server (See at least column 5, lines 50-60, column 6, lines 55-67, column 6, lines 1-10 and 60-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 15-35 and 55-67, and column 9, lines 1-20, wherein user input determines which artist to select from a pool of artists);

dividing said work into categories (See at least figure 6 and column 12, lines 40-45, wherein a genre is defined for the works);

selecting said work from said categories (See at least figure 6 and column 12, lines 40-45, wherein a work is selected from the categories using the links);

elevating selected works into positions that are eligible to receive direct financial support from users (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected by users as eligible for financial contributions for said user);

promoting the artists who receive a predefined amount of direct financial contributions (See at least column 9, lines 10-50, wherein the artist are promoted); and

providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell there contribution to an artist); and

(b) a redistribution of their contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their contribution undistributed in a non-artist account (See at least column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-45, wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist).

18. As per claim 23, Chacker discloses instructions for limiting the number of positions available to receive financial contributions from users (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67,

and column 9, lines 1-20, wherein the artist positions in the system are limited by a pre-selection process which narrows the number of artists that move into the voting portion of the system).

19. As per claim 24, Chacker teaches an article comprising a computer-readable medium that stores computer executable instructions for causing a computer system to:

receive user input to determine which artist to select from a pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein user input determines which artist to select from a pool of artists);

determine the market demand for said selected artist based on users contributing to a fund for said artist (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, which discuss determining the market demand for an artist based on consumers support and contribution to a virtual fund of an artist);

identify artists that attain a predefined level of user contributions (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, which discusses identifying artists that attain the highest level of support from the consumers (by way of stocks purchased) and offering these artists recording contracts); and

providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell there contribution to an artist); and

(b) a redistribution of their contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their contribution undistributed in a non-artist account (See at least column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-45, wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist).

20. As per claim 25, Chacker teaches an article wherein users select and contribute to an artist through a network connection (See at least figures 2 and 4, which discloses a network).

21. As per claim 27, Chacker teaches a method for determining the market demand for an artist, the method comprising:

receiving input from a plurality of users to at least one of a plurality of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein user input determines with regards to a plurality of artists is received);

selecting at least one artist from said plurality of artists to receive financial contributions from said plurality of users (See at least column 5, lines 15-35 and 50-60, column 6, lines 55-67,

Art Unit: 3623

column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein at least one artist is selected to receive financial contributions); and

identifying from said plurality of artists said at least one artist that receives a predefined amount of financial contributions, wherein said financial contributions are not in exchange for artist merchandise (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, which discusses identifying artists that attain the highest level of support from the consumers (by way of stocks purchased) and offering these artists recording contracts); and

providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell there contribution to an artist); and

(b) a redistribution of their contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their contribution undistributed in a non-artist account (See at least column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-45, wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist).

***Claim Rejections - 35 USC § 103***

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chacker (U.S. 6,578,008) in view of “7up launches a one-of-a-kind Internet Music Program” (Business Wire).

24. As per claim 3, Chacker discloses a method wherein users contribute to an artist who may attain a predefined level of user contributions, wherein users can earn prizes for contributing the artists, and wherein a user who contributes to an artist who attains a predefined level of user contributions is given an artist profile with a digital download (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20 and 35-40, wherein users contribute to an artist and when the artist attains a predefined level of contributions, the users who contributed receive an email concerning the artist). However, Chacker does not expressly disclose supplying these users with a recognition certificate regarding said artist.

“7up launches a one-of-a-kind Internet Music Program” discloses giving users interacting with the network music related merchandise (See page 1, section 5).

Both Chacker and “7up launches a one-of-a-kind Internet Music Program” discuss networks that promote unsigned artists through user interaction. Chacker further discloses the importance of making the users of the system feel like part of a community and increase the fun

and enjoyment of the system by providing users with the opportunity for prizes as well as the opportunity to launch a new band. See at least column 8, lines 15-30 and 55-67, and column 9, lines 1-10 and 49-60. Providing incentives to participate, such as prizes and gimmicks, is well known in the marketing and sales industry. Therefore, it would be one of ordinary skill in the art at the time of the invention to provide the users of Chacker a recognition certificate regarding an artist in order to increase user participation by creating a more community oriented tool and by providing incentives, as is taught in the prior art and known in the art.

25. As per claim 8, Chacker discloses limiting the number of user permitted to contribute to said artist (See at least figure 5, wherein users must be registered with the system in order to contribute). However, Chacker does not expressly disclose limiting the users to a predefined number.

“7up launches a one-of-a-kind Internet Music Program” discloses limiting the number of users permitted to contribute to said artist to a predefined time period (See page 1, sections 5 and 6). However, “7up launches a one-of-a-kind Internet Music Program” does not disclose that only a predefined number of people may vote.

Both Chacker and “7up launches a one-of-a-kind Internet Music Program” discuss networks that promote unsigned artists through user interaction. Chacker discusses determining each artist’s popularity through the user interaction with said artist. It is well known in marketing to use controls when taking market measurements (penetration, demand, etc.), such as using a defined sample group or a defined time period in order to have a standard for efficient comparisons. Furthermore, it is well known that voting needs to be limited by some condition in order for a contest to end and the results to be tabulated. Therefore, it would have been obvious

to one of ordinary skill in the art at the time of the invention to limit the number of users interacting with the system of Chacker when determining the leading unsigned artists in order to more accurately choose the best artists by establishing standards and measurable quantities to be used in making a judgment.

26. Claims 4-6, 11, 12, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chacker (U.S. 6,578,008) in view of Riffage.com. The following references disclose different aspects of Riffage.com:

- i. Article "Curtain closes for Riffage.com" by Lee (referred to herein as reference A).
- ii. Article "Riffage.com picks up indie record label" by Borland (referred to herein as reference B).
- iii. Article "Bands and fans rub elbows on Riffage.com" by McIntosh (referred to herein as reference C).
- iv. Screenshot of Riffage.com, dated 10/12/1999, (referred to herein as reference D).

27. As per claim 4, Chacker discloses a method wherein users contribute to funds of artists and further comprising making available to each artist attaining a level of user contribution funds to produce and commercialize the artist (See at least column 9, lines 10-50, wherein artists that reach the predefined criteria of the A&R representatives are afforded record contracts, marketing, etc. by the system). However, Chacker does not expressly disclose that the funds come directly from the users contributions.

Riffage.com discloses a method further comprising making available to each artist attaining a level of user contribution funds from the user's contribution to the artist to produce and commercialize the artist (See reference C, page 1, sections 3 and 4, and page 2, sections 1 and 4, which discloses giving each artist that attains funds on the site some of the money to produce and commercialize their band).

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses that the contributions of the users to the artist are virtual financial contributions upfront, and that after popular artists are afforded record contracts the same users would buy the cds and recordings of the artists. Chacker discusses the importance of knowing the popularity of an artist before signing said artist so that the system will be able to make money by said artist in at least column 8, lines 1-30, and the importance of reducing costs. Riffage.com discloses receiving non-virtual financial contributions upfront before signing an artist for a record contract and giving the artist monies from these contributions. Therefore, it would have been obvious to one of ordinary in the art at the time of the invention to require non-virtual financial input upfront in the system of Chacker and provide this money to the artist in order to reduce the financial risk to the system of signing an artist by proving the financial viability of an artist's popularity upfront before investing the money.

28. As per claim 5, Chacker teaches a method wherein comprising using said funds to produce a record from said funds when said artist is a musician (See column 7, lines 25-55, and column 9, lines 19-45).

29. As per claim 6, Chacker teaches a method providing the artist with an entire fund based on the completion of a predefined criteria (See at least column 9, lines 10-50, wherein artists that reach the predefined criteria of the A&R representatives are afforded record contracts, marketing, etc. by the system). However, Chacker does not expressly disclose that the funds come directly from the users contributions.

Riffage.com discloses a method further comprising making available to each artist attaining a level of user contribution funds from the user's contribution to the artist to produce and commercialize the artist (See reference C, page 1, sections 3 and 4, and page 2, sections 1 and 4, which discloses giving each artist that attains funds on the site some of the money to produce and commercialize their band).

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses that the contributions of the users to the artist are virtual financial contributions upfront, and that after popular artists are afforded record contracts the same users would buy the cds and recordings of the artists. Chacker discusses the importance of knowing the popularity of an artist before signing said artist so that the system will be able to make money by said artist in at least column 8, lines 1-30, and the importance of reducing costs. Riffage.com discloses receiving non-virtual financial contributions upfront before signing an artist for a record contract and giving the artist monies from these contributions. Therefore, it would have been obvious to one of ordinary in the art at the time of the invention to require non-virtual financial input upfront in the system of Chacker and provide this money to the artist in order to reduce the financial risk to the system of

signing an artist by proving the financial viability of an artist's popularity upfront before investing the money.

30. As per claims 11 and 12, Chacker teaches :

- i. in claim 11, making the fund available to the artist to produce a musical record (See at least column 9, lines 10-50, wherein artists that reach the predefined criteria of the A&R representatives are afforded record contracts, marketing, etc. by the system); and
- ii. in claim 12, releasing a fund to the artist based on the artist meeting predefined criteria (See at least column 9, lines 10-50, wherein artists that reach the predefined criteria of the A&R representatives are afforded record contracts, marketing, etc. by the system).

However, Chacker does not expressly disclose that the fund comes directly from the users contributions.

Riffage.com teaches a method further comprising:

- i. in claim 11, making the fund available to the artist to produce a musical record (See reference A, page 1, section 1, reference B, page 1, section 4, and reference C, page 1, section 4, and page 2, section 1, which discloses the artist having access to the fund, thus generating a profit for the artist, and the artist being able to produce a musical record); and
- ii. in claim 12, releasing the fund to the artist based on the artist meeting predefined criteria (See reference A, page 1, section 1, and reference C, page 1, sections 2-4, and page 2, section 1-2, wherein a registered artist that makes a profit for the network is entitled to a portion of the funding).

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses that the

contributions of the users to the artist are virtual financial contributions upfront, and that after popular artists are afforded record contracts the same users would buy the cds and recordings of the artists. Chacker discusses the importance of knowing the popularity of an artist before signing said artist so that the system will be able to make money by said artist in at least column 8, lines 1-30, and the importance of reducing costs. Riffage.com discloses receiving non-virtual financial contributions upfront before signing an artist for a record contract and giving the artist monies from these contributions. Therefore, it would have been obvious to one of ordinary in the art at the time of the invention to require non-virtual financial input upfront in the system of Chacker and provide this money to the artist in order to reduce the financial risk to the system of signing an artist by proving the financial viability of an artist's popularity upfront before investing the money.

32. As per claim 26, Chacker discloses a computer-implemented apparatus for determining market demand for an artist comprising:

means for receiving and storing works of artists (See at least figure 6, column 5, lines 15-35 and 65-67, and column 6, lines 1-10 and 60-67, wherein the sample is received and stored);

means for enabling users to access the stored works (See at least figures 2 and 4, which disclose enabling users to access the stored works);

means for receiving user input to elevate artist from the general artist pool (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein user input determines which artist to select from a pool of artists);

means for making elevated artists eligible for financial contributions from users (See at least column 5, lines 15-35 and 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein selected works are in a position that is eligible to receive financial support from users);

means for making financial amounts of the system available to artists that meet predefined criteria (See at least column 9, lines 10-50, wherein artists that reach the predefined criteria of the A&R representatives are afforded record contracts, marketing, etc. by the system);

means for providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell their contribution to an artist); and

(b) a redistribution of their contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their contribution undistributed in a non-artist account (See at least column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-45, wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist).

However, Chacker does not expressly disclose that the financial amounts available to the artist come directly from the users contributions.

Riffage.com disclose means for making financial contributions of users available to artists that meet predefined criteria (See reference C, page 1, sections 2, 3, and 4, and page 2, sections 1 and 2, wherein making financial contributions from users available to artists that bring in money and are registered with the system. When an artist reaches a predefined level of support from users he/she is automatically sent to a recording label representative. See reference B, section 4).

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses that the contributions of the users to the artist are virtual financial contributions upfront, and that after popular artists are afforded record contracts the same users would buy the cds and recordings of the artists. Chacker discusses the importance of knowing the popularity of an artist before signing said artist so that the system will be able to make money by said artist in at least column 8, lines 1-30, and the importance of reducing costs. Riffage.com discloses receiving non-virtual financial contributions upfront before signing an artist for a record contract and giving the artist monies from these contributions. Therefore, it would have been obvious to one of ordinary in the art at the time of the invention to require non-virtual financial input upfront in the system of Chacker and provide this money to the artist in order to reduce the financial risk to the system of signing an artist by proving the financial viability of an artist's popularity upfront before investing the money.

***Response to Arguments***

33. Applicant's arguments with respect to claims 1-17 and 20-27 have been considered but are moot in view of the new grounds of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Goldman (U.S. 5,629,867) discloses a tool that stores music by artists.

Kaplan (U.S. 5,237,157) discloses a point-of-preview system wherein subscriber's profile data is stored and the subscriber previews and rates music.

“Welcome!” (www.garageband.com) teaches a system that allows users to review music of emerging artists and receive points for doing so.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (703) 305-3882. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

*bvd*  
bvd  
February 5, 2004

  
TARIQ R. HAFIZ  
SUPERVISORY PATENT EXAMINER  
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